

ARKANSAS COURT OF APPEALS

DIVISION IV
No. CACR08-1454

WILLIE LEE SHAVERS
APPELLANT

V.

STATE OF ARKANSAS
APPELLEE

Opinion Delivered JUNE 3, 2009

APPEAL FROM THE PULASKI
COUNTY CIRCUIT COURT
[NO. CR07-356]

HONORABLE WILLARD
PROCTOR, JR., JUDGE

AFFIRMED

LARRY D. VAUGHT, Chief Judge

Willie Lee Shavers was convicted by a Pulaski County jury of attempted capital murder and having employed a firearm to commit the offense. He was sentenced to a total of thirty-seven years' imprisonment. He brings this appeal, contending that the trial court erred in denying his motions for directed verdict challenging the sufficiency of the evidence supporting this conviction for attempted capital murder. We affirm.

A motion for a directed verdict is a challenge to the sufficiency of the evidence. *Salley v. State*, 303 Ark. 278, 796 S.W.2d 335 (1990). In a challenge to the sufficiency of the evidence, we review the evidence in the light most favorable to the State and sustain the conviction if there is any substantial evidence to support it. *Id.* Evidence is substantial if it is of sufficient force and character to compel reasonable minds to reach a conclusion and pass beyond suspicion and conjecture. *Id.* In reviewing the sufficiency of the evidence, we need

consider only evidence in support of the conviction. *Id.*

A person commits capital murder if, with the premeditated and deliberated purpose of causing the death of a law enforcement officer who is acting in the line of duty, he causes the death of any person. Ark. Code Ann. § 5-10-101(a)(3) (Supp. 2007). A person attempts to commit an offense if he purposely engages in conduct that “[c]onstitutes a substantial step in a course of conduct intended to culminate in the commission of an offense whether or not the attendant circumstances are as the person believes them to be.” Ark. Code Ann. § 5-3-201(a)(2) (Repl. 2006). Conduct constitutes a substantial step if it is strongly corroborative of the person’s criminal purpose. Ark. Code Ann. § 5-3-201(c) (Repl. 2006).

It has been held that premeditation and deliberation constitute the necessary mental state for the commission of attempted capital murder. *Johnson v. State*, 375 Ark. 462, ___ S.W.3d ____ (2009). Premeditation and deliberation may be inferred from circumstantial evidence. *Salley, supra*. Premeditation and deliberation need not exist for any particular length of time and indeed may be formed almost on the spur of the moment. *Id.* These elements may also be inferred from the circumstances of the case, such as the character of the weapon used, the manner in which it was used, and the conduct of the accused under all of the circumstances existing. *Id.*

The evidence presented at trial, viewed in the light most favorable to the State, is as follows. On December 14, 2006, at 2:50 a.m., North Little Rock police were dispatched to 808 West 21st Street based on a call from a woman who stated that her son was outside the home, naked, possibly on drugs, causing a disturbance. Officer Gary Jones was the first to arrive on the scene. When Officer Jones approached the home, he heard a noise and saw a

naked male (later identified as Shavers) standing near a carport. Officer Jones saw something shiny in Shavers's hand and then saw Shavers raise his hands, pointing them toward the officer. Shavers then yelled "pow" or "bang." As Officer Jones retreated, he saw Shavers holding a gun and then heard gunshots. Officer Jones returned fire. Shavers hid under a vehicle in the carport, and he yelled that "the police will die[,] and I will live."

Officers Denise Canterbury and Matthew Roebuck arrived seconds after Officer Jones. Officer Canterbury testified that she saw Shavers point a gun toward Officer Jones and heard the gunshots. Officer Roebuck testified that he heard one gunshot come from the carport area and also heard Shavers yell, "[N]ow I'm going to kill you." Another officer, Michael Blevins, arrived within minutes of being dispatched. He testified that he heard Shavers say, "All you cops are going to be dead."

When Shavers stood back up, he placed his gun down on a retaining wall. Unarmed, but still refusing to comply with the officers' commands, officers employed less-than-lethal measures¹ to subdue him. The measures had little or no effect, and Shavers fled. He was quickly apprehended and arrested. Officers retrieved Shavers's gun, identified as a .32 caliber revolver. Five rounds were recovered from this weapon at the scene, and an expert witness from the Arkansas State Crime Laboratory confirmed that three of those rounds had been fired.

Shavers concedes that he fired a .32 caliber revolver at least three times during the

¹The less-than-lethal measures employed were a gun that fired rubber pellets and beanbags and a chemical agent similar to a pepper spray.

encounter with Officer Jones² but contends that the State failed to produce substantial evidence that he fired the revolver at the officer with the intention of causing his death. He points to Officer Jones's testimony that he did not see a muzzle flash from Shavers's gun, that Officer Jones was not struck by any .32 caliber bullets fired by Shavers, and that the State never presented any evidence that bullets fired by Shavers landed anywhere near the officer. Thus, Shavers claims he was entitled to a directed verdict on the attempted-capital-murder charge. We disagree and hold that substantial evidence supports Shavers's conviction.

First, Shavers concedes that he fired a .32 caliber revolver three times during the encounter with Officer Jones. Officer Jones testified that he thought that Shavers was shooting at him. He said that Shavers's gun was pointed in his direction and that he heard gunshots. Officer Canterbury also testified that she saw Shavers point a gun and shoot at Officer Jones. During the incident, Officers Jones, Roebuck, and Blevins heard Shavers yell such phrases as, "the police will die[,] and I will live," "now I'm going to kill you," and "all you cops are going to be dead." The jury could have interpreted these statements as evidence of Shavers's intent to kill Officer Jones.

We are not persuaded by Shavers's argument that the conviction is unsupported because the State failed to show that Shavers's bullets actually struck the officer or landed somewhere near the officer. This is not required. *Salley, supra* (affirming attempted-capital-murder conviction where the defendant pointed a gun and fired three shots at a police officer

²Shavers's concession is likely motivated by forensic evidence presented by the State that established that, during the incident, Shavers actually fired three bullets from his weapon.

but failed to strike him). Likewise, we are not persuaded by Shavers's argument that the conviction is unsupported because no one saw a bullet come from his gun. This is not required either. *Abdullah v. State*, 301 Ark. 235, 783 S.W.2d 58 (1990) (affirming conviction for attempted capital murder where police officers heard gunshots but could not testify with certainty who fired the gunshots at them).

In sum, we hold that there was substantial evidence supporting Shavers's conviction for attempted capital murder. Accordingly, we hold that the trial court did not err in denying Shavers's motions for directed verdict.

Affirmed.

KINARD and BROWN, JJ., agree.